



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD F. CUNDARI,

Defendant.

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:

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

12 5149

COMPLAINT

Plaintiff, the United States of America, by and through its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and David A. Degnan and Charlene Keller Fullmer, Assistant United States Attorneys, alleges as follows:

1. The United States of America brings this action pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733 and common law and alleges that the defendant, Richard F. Cundari, fraudulently obtained disability annuity benefits from the United States Railroad Retirement Board, a federal agency.

PARTIES

2. The plaintiff is the United States of America on behalf of the United States Railroad Retirement Board ("RRB"), which made the subject payments of this complaint.

3. The defendant is Richard F. Cundari, who resides at 209 Briarwood Court, Doylestown, Pennsylvania 18901.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3729.

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: SEP 10 2012
ATTEST: Steve Tomas
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

5. Venue is proper in the Eastern District of Pennsylvania pursuant to 31 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a).

FACTUAL BACKGROUND

6. The Railroad Retirement Act, as amended, 45 U.S.C. § 231 et seq., provides benefits, in the form of occupational disability annuities, for railroad workers whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

7. The occupational disability annuity program is administered by the United States Railroad Retirement Board, and is financed by taxes paid by railroad employees.

8. To qualify for these federal benefits, disabled railroad workers who meet the requirements of the program must disclose to the RRB any employment and income that might affect the claimant's entitlement to benefits.

9. Benefits cannot be claimed or paid for any month in which the claimant earns in excess of \$400 to \$770 during the 2001-2009 years, after deduction of impairment-related work expenses.¹

10. The monthly occupational disability benefit rates for the periods during which defendant received both disability benefits and income exceeding the statutory monthly earnings cap were as follows: approximately \$2,321 per month for the 2001 calendar year;

¹ Prior to 2007, the monthly earnings limit was \$400 after deduction of disability related work expenses. On January 12, 2007, Public Law No: 109-478, Railroad Retirement Disability Earnings Act, increased the monthly earnings cap for U.S. RRB disability annuitants as follows:

2007 - \$700 monthly	2010 - \$780 monthly
2008 - \$730 monthly	2011 - \$780 monthly
2009 - \$770 monthly	

approximately \$2,369 per month for the 2002 calendar year; approximately \$2,296 per month for the 2003 calendar year; approximately \$2,438 per month for the 2004 calendar year; approximately \$2,492 per month for the 2005 calendar year; approximately \$2,575 per month for the 2006 calendar year; approximately \$2,646 per month for the 2007 calendar year; approximately \$2,695 per month for the 2008 calendar year; approximately \$2,700 per month for the 2009 calendar year.

11. For claim periods covering approximately January 2001 through December 2009, defendant applied for and received disability benefits for numerous months in which his income greatly exceeded \$400-\$770 per month.

12. For each year from 2001 through 2009, defendant received approximately twelve (12) monthly benefit checks and deposited each check into defendant's personal bank account.

13. Defendant was not eligible to receive disability benefits for such months.

14. Defendant knew that he was not eligible to receive disability benefits for such months.

COUNT ONE
(False Claims Act)

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 14 as if fully set forth herein.

16. By virtue of the acts described above, defendant knowingly presented or caused to be presented to the United States Railroad Retirement Board false or fraudulent claims or a false record for payment or approval in violation of 31 U.S.C. § 3729(a)(1).

17. The claims, records, and statements were false and fraudulent in that defendant earned more than \$400-\$780 per month within the meaning of the applicable statutory provisions and was not eligible for occupational disability benefits.

18. Each invoice or claim for payment made for occupational benefits, as described above, constitutes a false claim made to the United States, as defined in the False Claims Act.

19. Defendant violated the False Claims Act and, as a result of the defendant's actions, the United States has suffered damages.

20. Under the False Claims Act, 31 U.S.C. § 3729(a), defendant is liable to the United States for three times the damages sustained by the United States, together with a civil penalty for each false claim which defendant presented, or caused to be presented, to the United States.

COUNT TWO
(False Claims Act)

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 as if fully set forth herein.

22. Defendant knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved in violation of 31 U.S.C. § 3729(a)(2).

23. The claims, records, and statements were false and fraudulent in that defendant earned more than \$400-\$780 per month within the meaning of the applicable statutory provisions and was not eligible for occupational disability benefits.

24. Defendant violated the False Claims Act and, as a result of the defendant's actions, the United States has suffered damages.

25. Under the False Claims Act, 31 U.S.C. § 3729(a)(2), defendant is liable to the United States for three times the damages sustained by the United States, together with a civil penalty for each false claim which defendant presented, or caused to be presented, to the United States.

COUNT THREE
(Unjust Enrichment)

26. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 as if fully set forth herein.

27. The conduct described in the foregoing paragraphs caused defendant to receive benefits from the United States to which he was not entitled.

28. Defendant has been unjustly enriched by his receipt of benefits from the United States and he is not entitled to retain the benefits.

WHEREFORE, plaintiff, the United States of America, demands judgment in its favor and against defendant as follows:

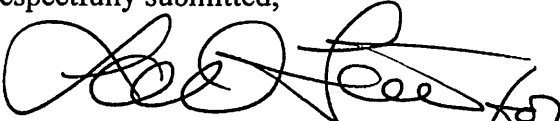
A. With respect to Count One, an amount equal to three times the actual damages sustained by the United States, plus interest, together with a civil penalty for each false claim presented to the United States.

B. With respect to Count Two, an amount equal to three times the actual damages sustained by the United States, plus interest, together with a civil penalty for each false claim presented to the United States.

C. With respect to Count Three, restitution in an amount to be determined, plus interest.

D. Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.


Respectfully submitted,



ZANE DAVID MEMEGER

United States Attorney

First Assistant U.S. Attorney



MARGARET L. HUTCHINSON

Assistant United States Attorney

Chief, Civil Division



DAVID A. DEGNAN

CHARLENE KELLER FULLMER

Assistant United States Attorneys

Dated: September 10, 2012

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David Degnan, AUSA - Charlene Fullmer, AUSA
615 Chestnut Street, Suite 1250, Philadelphia, PA 19106
(215) 861-8522 - (215) 861-8301

DEFENDANTS

Richard F. Cundari

County of Residence of First Listed Defendant Bucks

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- X 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	X <input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	IMMIGRATION	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

31 U.S.C. Sections 3729-3733

Brief description of cause:

False Claims Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: X Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

09/10/12

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

United States of America	:	CIVIL ACTION
	:	
v.	:	
	:	
Richard F. Cundari	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

09/10/12
Date


Attorney-at-law

United States of America
Attorney for

215-861-8522
Telephone

215-861-8618
FAX Number

david.degnan@usdoj.gov
E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106

Address of Defendant: 209 Briarwood Court, Doylestown, PA 18901

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a non-governmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____

Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases - False Claims Act
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, David Degnan, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 09/10/12

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 09/10/12

Attorney-at-Law

Attorney I.D.#